



November 4, 2010

Anthony Moore
Assistant Secretary of Natural Resources for Chesapeake Bay Restoration
Office of the Governor
P.O. Box 1475
Richmond, VA 23218

Bob Koroncai
US Environmental Protection Agency Region 3 Water Protection Division
US EPA Region 3, 1650 Arch St
Philadelphia, PA 19103

Re: Public Comment, Commonwealth of Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan (September 2010 - Public Review Draft)

Dear Mr. Moore and Mr. Koroncai,

The Elizabeth River Project strongly supports Virginia's development and implementation of a TMDL Watershed Implementation Plan for nitrogen, phosphorous, and sediment. This may be the most promising step yet for both Virginia and the US EPA toward reducing nutrients, the top challenge for restoring the Chesapeake Bay. This plan is especially critical for our home river, the Elizabeth and its Lafayette branch, which exhibit some of the highest nutrient levels in the Chesapeake Bay. Each summer, a massive algal bloom starts in the Lafayette River and spreads into the lower bay. In some cases these blooms have led to fish kills.

In regard to specific elements of your draft plan, we are encouraged by your intent to reduce nutrients and many good ideas included in the draft plan. We also have several significant concerns:

- Our review indicates the need throughout for a clearer commitment to the plan. The language indicates Virginia will "consider" and "explore" many promising strategies. To achieve the significant improvements in water quality that are imperative for restoring the Chesapeake Bay, the plan needs to identify many more of these strategies that definitely will be put into action, and provide more details of how and when each such strategy will be carried out.
- We are highly concerned that the plan acknowledges that Virginia does not expect to meet EPA's requirements for 2025 nitrogen and phosphorous allocations in the James River, which includes the Elizabeth sub-watershed. EPA's draft allocation is 23.480 million pounds/year for nitrogen and your plan anticipates a load of 26.790 million pounds per year (p.7). For phosphorous, the EPA draft allocation is 2.3 million pounds/year for the James, while your plan anticipates a load of 2.690 million pounds/year for the James. Much restoration progress is underway with a high degree of community commitment to restore the James and its Elizabeth River sub-watershed. You indicate being able to meet the EPA allocations in other tributaries. The James/Elizabeth system should be no different.

We provide further discussion of these issues and stand by to help in any way that would be useful to you.

NEED FOR STRONGER COMMITMENTS

- 1) We are encouraged that Virginia is considering a list of potential monitoring and control measures to reduce urban sources of nutrients (p. 78, 79), including:
 - considering requiring reporting for lawn care companies,
 - considering nutrient management plans for municipalities/counties and golf courses,
 - investigating sales restrictions on do-it-yourself fertilizers such as a possible ban on phosphorous and requiring fertilizers to include a significant percentage of slow-release nitrogen and time-release restrictions for sale of fertilizers,
 - considering prohibiting nitrogen in de-icers, and
 - considering requiring proper storage and disposal of fertilizers by retailers.

All of these have strong potential but the mere consideration of them does not indicate if they will be implemented. We recommend that the final implementation plan indicate a significant number of these strategies that Virginia is committed to carrying out, and provide more details for how they will be implemented including a timeline.

- 2) We support the list of "contingency" actions that your plan says could be implemented if allocations are not met through other strategies (p. 79, 80). In fact, your contingency wording should be strengthened from "**could** be employed if allocations are not met," to "**will** be employed if allocations are not met."
- 3) The plan relies heavily on meeting nutrient reductions for urban stormwater using the Virginia Nutrient Credit Exchange Program. However, the plan does not provide enough detail to determine if trading between wastewater and urban stormwater would be effective. We recommend strengthening the plan to provide specific details of how the Nutrient Credit Exchange System would work for stormwater and wastewater credit exchanges in an urban environment. This information should include how credits would be established and traded.

NEED FOR STRONGER JAMES/ELIZABETH RIVER FOCUS

- 4) As indicated, we are highly concerned that the proposed plan acknowledges that Virginia does not expect to meet EPA's requirements for 2025 nitrogen and phosphorous allocations in the James River, which includes the Elizabeth sub-watershed. The massive algal blooms in the lower bay emphasize the need for significant reductions in nitrogen and phosphorus. We recommend a more aggressive strategy that would enable the James and the Elizabeth to meet the required allocations and would be eager to use our consensus-building experience to help develop approaches that might obtain broad stakeholder support.

- 5) We commend DEQ's intention to undertake a James River Chlorophyll Study, as indicated in Appendix 2. The tasks appear well-thought out and offer promise for understanding the dynamics of the troubling algal blooms occurring in the James River including those originating in the Elizabeth and Lafayette. We recommend reducing the proposed study and rulemaking period to three years instead of five years. We understand that data has been collected for five years already, using the data flow system from the James River.
- 6) Beyond the chlorophyll study mentioned in the appendix, the plan does not appear to address the Elizabeth River specifically. The Elizabeth contains some of the highest nutrient concentrations in the Chesapeake Bay. For this reason, we request that the state provide more focus on strategies to reduce nutrients in the Elizabeth. We recommend that the TMDL recognize the watershed plan adopted by Virginia already for the Elizabeth River (updated 2008) and indicate continued commitment to that plan. In addition, Virginia should work with local stakeholders including Elizabeth River Project to implement specific nutrient reduction projects for reducing nutrients in the Elizabeth River.

We appreciate your leadership on these critical issues. We look forward to continuing to work with you to conserve Virginia's natural resources.

Sincerely,



Marjorie Mayfield Jackson
Executive Director